

SECTION A

INTRODUCTION

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THE DAVIS-BACON AND RELATED ACTS (DBRA)

The Davis-Bacon Act, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

In addition to the Davis-Bacon Act itself, Congress has added prevailing wage provisions to approximately 60 statutes which assist construction projects through grants, loans, loan guarantees, and insurance. These "related Acts" involve construction in such areas as transportation, housing, air and water pollution reduction, and health. If a construction project is funded or assisted under more than one Federal statute, the Davis-Bacon prevailing wage provisions may apply to the project if any of the applicable statutes requires payment of Davis-Bacon wage rates.

The geographic scope of the Davis-Bacon Act is limited, by its terms, to the 50 States and the District of Columbia. By the same token, the scope of each of the related Acts is determined by the terms of the particular statute under which the Federal assistance is provided. For example, Davis-Bacon prevailing wage provisions would apply to a construction contract located in Guam or the Virgin Islands funded under the Housing and Community Development Act of 1974, even though the Davis-Bacon Act itself does not apply to Federal construction contracts to be performed outside the 50 States and the District of Columbia.

WAGE DETERMINATIONS

A "wage determination" is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

The Wage and Hour Division (the Division), issues two types of wage determinations: general determinations, also known as area determinations, and project determinations. The term "wage determination" is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and scope of the original decision.

General Wage Determinations reflect those rates determined by the Division to be prevailing in a specific geographic area for the type of construction described. The general wage decisions contain no expiration date and remain in effect until modified, superseded, or withdrawn. If a contracting agency has a proposed construction project to which a general determination would be applicable, the published determination may be used by the contracting agency without consulting the Department of Labor.

Project Wage Determinations are issued at the specific request of a contracting agency; each is applicable to the named project only; and expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested by an agency and approved by the Division. If such a determination is not used in the period of its effectiveness, it is void. Project determinations are issued in response to contracting agencies submitting to the Division a Standard Form 308 requesting a wage determination.

Modifications of general and project wage determinations are issued to update data in the original determinations. If publication occurs less than 10 days prior to bid opening, and the agency finds that there is not sufficient time still available before bid opening to notify bidders of the modification, it may be disregarded. (For projects assisted under the National Housing Act, and for projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, dates other than bid opening apply. See Regulations, 29 CFR Part 1, section 1.6). If the contracting officer chooses to disregard a modification, a report of this action shall be inserted in the contract file and made available to the Division upon request.

If a contract has not been awarded within 90 days after bid opening, modifications to a general wage determination in the contract shall be effective with respect to that contract unless

the agency requests and obtains an extension of the 90-day period from the Division.

Supersedeas Wage Determinations are issued annually to replace general decisions issued in the previous edition of the publication entitled General Wage Determinations Issued Under the Davis-Bacon and Related Acts. Supersedeas project wage determinations may also be issued. Supersedeas decisions affecting determinations are effective under the same circumstances as "modifications." Whereas a modification to a wage determination may make changes in only selected provisions of the wage determination, a supersedeas determination replaces the entire existing wage decision.

Notice is published in the Federal Register each week (usually on Friday) to advise the public of the publication of general wage determinations, modifications, supersedeas actions, withdrawal actions, and corrections affecting such wage determinations.

Extensions of Wage Determinations

When a **general** wage determination has not been awarded within 90 days after bid opening, the head of the contracting/assisting agency may request an extension of the 90 day period from the Wage and Hour Administrator. When, due to unavoidable circumstances, a **project** wage determination expires before award but after bid opening, the head of the contracting/assisting agency may request an extension of the expiration date of the project wage determination in the bid specifications instead of issuing a new wage determination. (For projects assisted under the National Housing Act, and for projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, dates other than bid opening apply. See Regulations 29 CFR Part 1, section 1.6.)

Extension requests should be supported by a written finding, including a brief statement of the factual support, that extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

The Administrator will either grant or deny the request for an extension after consideration of all the circumstances, including an examination to determine if the previously issued rates remain prevailing. If a request for the extension of a project wage determination is denied, a new wage determination will be issued to replace an expired project wage determination.